

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12131 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MUKUNDBHAI SHANKARDAS PATEL

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 12131 of 1993
MR MEHUL S SHAH for Petitioner
MR PR NANAVALI for Respondent No. 1
RULE SERVED for Respondent No. 1
MR SP HASURKAR, AGP for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/09/2004

ORAL JUDGEMENT

1. The petitioner challenges the impugned order

dated 1-9-1993 made by the State Government rejecting the revision application filed by the petitioner and confirming the order dated 15-1-1993 passed by the District Development Officer, resuming the plot of land which was granted to the petitioner on the ground that there was violation of condition No.6 of the grant since the building was not constructed within two years from the date of grant as stipulated nor even after thirty years from that date.

2. It was contended on behalf of the petitioner that the land was granted in perpetuity and that, there was no condition imposed for resumption of the plot of land on the ground that the construction was not made within the time stipulated. It was submitted that the District Development Officer had no authority to make an order of resumption since the land was granted in perpetuity under Rule 43(1)(a) of the Gujarat Land Revenue Rules, 1972. He referred to the agreement made in Form "H" under Rule 43(2) of the said Rules to point out that there was no condition incorporated therein for resumption of the plot, and that the condition was of imposing a fine by the Collector, if any breach was committed of the terms of the grant.

3. It is clear from the order of the revisional authority that the revisional authority proceeded on the footing that there was a condition of resumption of the plot if the construction was not made in two years. The District Development Officer had referred to breach of condition No.6 in his order dated 15-1-1993, but no such condition is pointed out on behalf of the respondents. Admittedly, such a condition is not there in the "Kabulat" in Form "H". There is no dispute about the fact that the plot of land was granted in perpetuity. The revisional authority has taken a decision without examining whether there was any condition enabling resumption of the plot and without taking into consideration agreement in Form "H" in which it was contemplated in Clause 4(a) that if there was any breach of the terms, penalty may be imposed by the Collector. It would, therefore, be appropriate that the State Government should re-consider the matter in its revisional jurisdiction to ascertain the nature of the conditions on which the grant was given and to find out whether the land could be resumed under any of those conditions of the terms of agreement on the ground of breach of any terms on which the grant was made. The impugned order dated 1st September 1993, at Annexure "C", is, therefore, hereby set aside and the matter is remitted to the respondent No.2 - revisional authority

for a fresh decision in accordance with law after hearing the petitioner. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

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